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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,522	06/25/2003	Tsunetoshi Miura	AA597	4100

27752 7590 06/20/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,522

Applicant(s)

MIURA ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/25/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for priority under copending Provisional Application No. 60/396,115 filed on July 16, 2002.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on June 25, 2003 was filed with the Application. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

Claim 5 is objected to as it is unclear from the text whether it is dependent upon Claim 3 or 4. Examiner is considering it to be dependent upon Claim 3 as Claim 3 refers to a second light transmittance whereas Claim 4 does not.

Claims 1-8, 12 and 14 are objected to because of the following informalities:

(1) Applicant sets forth body contacting and garment contacting layers with first and second light transmittances, respectively (Claims 1,2,3) and subsequently sets forth particular measurements and gradients for first and second light transmittances (Claims

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4-7), as well as particular Hunter Lab Total Color difference measurements (Claim 8).

The bases for setting forth these particular measurements are Applicant's perception that the ability to see graphics disposed on the flaps of the claimed article "decrease[s] women's melancholic mood" (Specification, page 8, lines 35, 36) and "the HLTCD is preferably within the above ranges to make women's emotion effectively stable while maintaining an appropriate range of the visibility of graphic 65" (Specification, page 9, lines 17-19). These are insufficient bases for claiming patentably distinguishable quantitative aspects of the claimed invention.

(2) The following phrases lack antecedent basis:

- (i) "the body facing surface" in Claim 1
- (ii) "the garment facing surface" in Claim 2
- (iii) "the Hunter Lab Total Color Difference" in Claim 8
- (iv) "the graphic protection layer" in Claim 14

(3) The exemplary language "(i.e. wing)" in Claim 12 must be removed from the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan ('954) et al in view of Haarer et al (U.S. Patent No. 6,482,192).

With respect to **Claim 1**: Jordan ('954) teaches training pant 20 (Fig. 1) with liquid permeable bodyside liner 42, outer layer 62 of outer cover 60, and absorbent assembly 44 (Fig. 3). Jordan ('954) teaches an absorbent assembly 44 having zones of different concentration of absorbent material to absorb and contain body exudates (Paragraph 0083), interpreted here as encompassing the concept of an edge defining an inner core region. Jordan ('954) teaches that absorbent assembly 44 is sandwiched between bodyside liner 42 and outer cover 40. Liner 42 and outer cover 40 are joined together by any suitable means as is well known in the art (Paragraph 0083) and are shown to extend outward from the edge of absorbent assembly 44 as shown in Fig. 3. Jordan ('954) teaches a graphic printed on the inner, body-facing surface 64 of inner layer 60 of outer cover 40 (Paragraph 0073). Jordan ('954) teaches that liner 42 and outer cover 40 jointly define at least one graphic region (Paragraph 0007).

Jordan ('954) does not teach a first light transmittance corresponding to the bodyside liner 42. Haarer ('192) teaches an absorbent article with a substantially transparent (i.e. light transmittance between 60% and 100% (Col. 2, lines 43-45)) liquid permeable cover layer. Haarer ('192) teaches that the transparency of the cover layer allows it to be non-discernible through clothing and thereby provides discretion to the user. Therefore, it would be obvious to modify the body-side liner taught by Jordan ('954) to be substantially transparent to provide a more discrete article for the user as taught by Haarer ('192).

With respect to **Claim 2**: Jordan ('954) teaches training pant 20 (Fig. 1) with liquid permeable bodyside liner 42, outer layer 62 of outer cover 60, and absorbent assembly 44 (Fig. 3) taught by Jordan ('954) as having zones of different concentration of absorbent material to absorb and contain body exudates (Paragraph 0083), interpreted here as encompassing the concept of an edge defining an inner core region. Jordan ('954) teaches that absorbent assembly 44 is sandwiched between bodyside liner 42 and outer cover 40 (Fig. 3) (Paragraph 0073). Liner 42 and outer cover 40 are joined together by any suitable means as is well known in the art (Paragraph 0083) and are shown to extend outward from the edge of absorbent assembly 44 as shown in Fig. 3.

Jordan ('954) teaches that bodyside liner 42 and outer cover 40 jointly define at least one graphic region (Paragraph 0007). While the graphic taught by Jordan ('954) is located in a central region with respect to the longitudinal axis of article 20 and is not found on the outer regions of the absorbent chassis 32 where bodyside liner 42 and

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outer cover 40 are bonded, the absorbent article with graphic 20 taught by Jordan ('954) is applied here as prior art. Applicant's reason for including a graphic on the outer portion of the garment facing surface of the body-contacting layer, cited here,

"In another aspect of the invention, the body contacting layer has a graphic printed on the garment facing surface at least in a portion of the outer region. The body contacting layer has a first light transmittance so that the graphic can be seen through the body contacting layer in the outer region.

The foregoing answers the need for an absorbent article that can provide an emotional benefit to users, and thus decrease users' melancholic mood without distress or inconvenience". (Paragraphs 0009-0011)

is based upon Applicant's perception of user reaction to said graphic and therefore is not a sufficient basis for claiming that including a graphic on the outer portion of the claimed article provides an advantage, is used for a particular purpose, or solves a stated problem.

Jordan ('954) does not teach that bodyside liner 42 is transparent and thus does not teach a first light transmittance corresponding to the bodyside liner 42. Haarer ('192) teaches an absorbent article with a substantially transparent (i.e. light transmittance between 60% and 100% (Col. 2, lines 43-45)) liquid permeable cover layer. Haarer ('192) teaches that the transparency of the cover layer allows it to be non-discernible through clothing and thereby provides discretion to the user. Therefore, it would be obvious to modify the body-side liner taught by Jordan ('954) to be substantially transparent to provide a more discrete article for the user as taught by Haarer ('192).

With respect to **Claims 3 and 5**: Jordan ('954) teaches graphics disposed on an outer cover layer 40 with light transmittance of 80% or greater that is interpreted here as

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transparent, which allows a user to see the graphic through outer cover 40 (Paragraph 0010).

With respect to **Claim 4**: Jordan ('954) does not teach that bodyside liner 42 is transparent and thus does not teach a first light transmittance corresponding to the bodyside liner 42. Haarer ('192) teaches an absorbent article with a substantially transparent (i.e. light transmittance between 60% and 100% (Col. 2, lines 43-45)) liquid permeable cover layer. Haarer ('192) teaches that the transparency of the cover layer allows it to be non-discernible through clothing and thereby provides discretion to the user. Therefore, it would be obvious to modify the body-side liner taught by Jordan ('954) to be substantially transparent to provide a more discrete article for the user as taught by Haarer ('192).

With respect to **Claims 6 and 7**: Jordan ('954) does not teach a difference between a first transmittance for bodyside liner 42 and second transmittance for outer cover 40. Haarer ('192) teaches that both cover layer and backsheet have a transmittance of between 60% and 100% therefore the difference between the two transmittances will fall in the range of 0% to 40%. Haarer ('192) teaches that the transparency of the cover layer allows it to be non-discernible through clothing and thereby provides discretion to the user. Therefore, it would be obvious to modify the body-side liner taught by Jordan ('954) to possess these light transmittance ranges and differences to provide a more discrete article for the user as taught by Haarer ('192).

With respect to **Claims 8**: At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to apply the Hunter Lab Total Color Difference (HLTCD) method to the article taught by Jordan ('954) because Applicant has not disclosed to Examiner's satisfaction that a HLTCD measurement for the difference between the outer region and the absorbent core of 0.5 – 73 provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the absorbent chassis 32 and absorbent system 44 of the article taught by Jordan ('954), and Applicant's invention, to perform equally well with any HLTCD measurement because both articles would perform the same function of absorbing exudate equally well considering an HLTCD value has no bearing whatsoever on the absorbing capacity of a sheet, core or article.

Therefore, it would have been prima facie obvious to modify the article of Jordan ('954) to obtain the invention as specified in claim 8 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Jordan ('954).

With respect to **Claim 9**: Applicant states that the outer region may be comprised of a graphic protection layer 34 or that it may be an extension of body contacting layer 30 (Specification, page 8, lines 4-8, page 12, lines 19-21), but that it must be transparent. Jordan ('954) does not teach that bodyside liner 42 is transparent. Haarer ('192)

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teaches an absorbent article with flaps formed from the transparent cover layer. It would be obvious to someone of ordinary skill in art to manufacture the flaps from transparent material already present and used for the cover layer, as opposed to creating and manufacturing an additional transparent layer on top of a non-transparent topsheet.

With respect to **Claims 10 and 11**: Jordan ('954) teaches an absorbent system with longitudinal side edges and lateral end edges flush with the waist of the article. Jordan ('954) does not teach an absorbent core with an outer region outside the longitudinal edges of the absorbent core. Haarer ('192) teaches an outer region disposed outside the longitudinal side edges of the absorbent core that extends beyond the core on the transversely opposite sides of the absorbent core and is in the form of flaps. Haarer teaches that flaps are generally flexible and configured to be folded over the edges of the underwear to anchor or secure the absorbent article to a user's underwear (Col. 2, lines 29-33). It is also well known in the art that providing an outer region of any nature provides additional leakage protection. Therefore it would be obvious to modify the article taught by Jordan ('954) to include an outer region as taught by Haarer ('192).

With respect to **Claim 12**: Jordan ('954) does not teach that absorbent chassis 32 contains flaps. Haarer ('192) teaches flaps that are extensions of material from the coversheet, backsheet or any combination thereof, are coextensive and are sealed around the periphery of the article.

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With respect to **Claims 13 and 14**: Jordan ('954) does not teach a graphic protection layer in absorbent chassis 32. Applicant has stated the reason for a graphic protection layer as follows:

For example, a material which has a suitable light transmittance can be selected for the graphic protection layers 34 in the outer region 26, while another material which has a suitable liquid permeability can be selected for the topsheet layer 32 in the core region 25. This is beneficial since it is not always easy to find one material that can meet the both requirements for the body contacting layer 30 (e.g., appropriate light transmittance and liquid permeability).

Examiner is interpreting the article taught by Jordan ('954) as modified to include flaps as taught by Haarer ('192) as prior art because Haarer ('192) teaches specific available transparent materials for manufacturing the cover sheet, a 9 gsm polypropylene, code SB-PTE 09 available from Shalag, Upper Tieberias, Israel (Col. 3, lines 12-18) and for the impermeable transparent backsheet a polyethylene monolithic film under the trade name Hytrel by DuPont or Atochme by Pebax (Col. 4, lines 38-46). Since Haarer ('192) did not teach that any additional treatment was applied to this film to achieve the level of transparency within the range taught, it is the Examiner's opinion that Haarer ('192) is teaching accessible, known materials that possess both acceptable liquid permeability (or impermeability) and acceptable transparency properties and thus graphic protection properties. These teachings therefore qualify the article of Haarer ('192) as prior art anticipating Claims 13 and 14.

It would be obvious to someone of ordinary skill in the art to modify the manufacture the flaps from transparent material taught by already present and used for

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the cover sheet and back sheet as taught by Haarer ('192), as opposed to creating and manufacturing an additional transparent layer on top of a non-transparent bodyside layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJH

Melanie J Hand
Examiner
Art Unit 3761



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700